

January 26, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0020**
Proposed Ordinance No. **2005-0524**

DELSJOY

Preliminary Plat Application

Location: Between the Cities of Kenmore and Bothell, just east of the Kenmore city limits, on the south side of Northeast 190th Street southwest of its intersection with 85th Avenue Northeast

Applicant: John F. Buchan Construction, Inc.
represented by **Mark Barber**
Goldsmith & Associates
1215 – 114th Avenue Southeast
Bellevue, Washington 98009
Telephone: (425) 462-1080
Facsimile: (425) 462-7719

King County: Department of Development and Environmental Services,
Trishah Bull
900 Oakesdale Avenue Southwest
Renton, WA 98055
Telephone: (206) 296-6758
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Approve with conditions
Approve with conditions
Approve with conditions

EXAMINER PROCEEDINGS:

Hearing Opened: January 10, 2006
Hearing Closed: January 10, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: Tim Price
John F. Buchan Construction, Inc.
2821 Northup Way #100
Bellevue, WA 98004
425-827-2266

Engineer: Hugh G. Goldsmith & Associates, Inc.
PO Box 3565
Bellevue, WA 98009
425-462-1080

STR: SW-06-26-05

Location: The site is located on the southern side of NE 190th Street, southeast of the NE 190th Street and 84th Avenue NE intersection.

Zoning: R-4-P-SO
Acreage: 4.9 acres
Number of Lots: 20
Density: 4 units per acre
Lot Size: Ranges from approximately 5,600 to 10,000 square feet
Proposed Use: Single-family detached dwellings
Sewage Disposal: Northshore Utility District
Water Supply: Northshore Utility District
Fire District: King County District No. 16
School District: Northshore School District No. 417
Application Completeness Date: November 12, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a 4.9-acre rectangular parcel located on the south side of Northeast 190th Street southwest of its intersection with 85th Avenue Northeast. The majority of the west boundary (excepting the most northerly portions) directly abuts the Kenmore city limits. (The City of Bothell corporate limits lie a few blocks to the north and east.) The site terrain slopes generally moderately to the west and west-southwest, with a small area of steeper slopes in the northwest portion. The property is vegetated primarily with pasture grass and scattered mixed species trees and brush. The most significant group of trees is in the northeast portion near the east property boundary. The site is undeveloped structurally. The surrounding area consists of residentially developed parcels to the north and west. Directly adjacent to the south and east is the Magnolia Farm, lying within a preserved agricultural enclave (zoned A-35) in the generally urbanizing Northshore area.

4. Applicant John F. Buchan Construction, Inc., proposes subdivision of the property into 20 lots for detached single-family residences. The residential density would be approximately four dwelling units per acre, with lot sizes ranging from approximately 5,600 to 10,000 square feet. Internal access to the lots would be provided by a public road cul-de-sac extending southerly from Northeast 190th Street and terminating near the southern boundary. The southernmost portions of the property would be devoted to an underground stormwater detention vault and other drainage facilities, and recreation facilities for the subdivision residents. A pedestrian connection to an existing residential subdivision directly to the west (*Westhill Place*) would be provided, extending westerly from approximately midway along the cul-de-sac road; it would connect with Northeast 187th Place within *Westhill Place*. (Northeast 187th Place within *Westhill Place* terminates at the west boundary of the subject property, with a temporary cul de sac. See Finding 7.) 50-foot structural setbacks would be observed along the east and south boundaries adjacent to the Magnolia Farm property, required due to the property's direct adjacency to the farm's A-35 zoning.
5. Lot and road drainage would be collected in catch basins and piped to detention and water quality maintenance systems. An administrative drainage adjustment has been granted with conditions by DDES (under file L04V0091) to allow the combination of the two onsite drainage subbasins into one drainage basin system for collection and conveyance. The downstream drainage system installed within the *Westhill Place* development to the west was sized to accommodate anticipated drainage discharge from development of the subject property, and it is performing effectively.
6. With walkway improvements, safe walking conditions would be provided for resident schoolchildren to walk to their nearby schools. The only new improvement required is the installation of a walkway on the west side of 85th Avenue Northeast (the pedestrian route to Westhill Elementary School and to the bus stop for Canyon Park Junior High School). The walkway improvements can be fit within the existing right-of-way without unusual difficulty along the more desirable location on the west side of the road (which has fewer installation conflicts and driveways, and is the safer side for pedestrians). Concern had been expressed by an 85th Avenue Northeast property owner (Gualtieri) about potential adverse effect on his fence along the route, but the fence has been found to be outside the right-of-way and will be unaffected by the improvements. The walking route to nearby Bothell High School is stated by the department report to consist of sidewalks and gravel shoulders.
7. The proposed subdivision will not provide a through road connection to Northeast 187th Place within the *Westhill Place* subdivision, which is an issue of some dispute. The owners/residents of the directly adjacent Lot 13 within *Westhill Place* (the Clarks) desire the through road connection in part for additional access during inclement weather, but also because it would allow extinguishment of the portion of the temporary cul-de-sac turnaround easement on their lot. It was originally anticipated when *Westhill Place* was designed that Northeast 187th Place would be extended through the subject property upon its development, but a consensus now has developed among the county road administration staff (KCDOT and DDES) and the nearby cities that a through connection is undesirable. (An example of this policy approach is that through connections are not supported by a City of Bothell Westhill sub-area plan addressing the subject area, with policy language discouraging through connection of neighborhood local streets in order to minimize cut-through traffic, by implication promoting the direction of local traffic toward collector and arterial roads instead.) Some of the other existing residential neighbors in *Westhill Place* do not desire a through connection either. The Examiner finds that the proposed subdivision makes appropriate provisions for roads and the public health, safety and general welfare without the through connection.

8. It appears from the evidence that only part of the Northeast 187th Place temporary cul-de-sac could be extinguished in any case, since a good portion of it appears to be dedicated as a stub road providing access to interior lots. Regardless, the entire extinguishment issue is for the City of Kenmore to decide, since the *Westhill Place* development lies within the Kenmore city limits and is therefore under City jurisdiction.
9. Support was expressed for the development design's incorporation of due sensitivity to the adjacent agricultural area by providing the oversized structural setbacks and maintaining a limited approach to road development and connection.

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-4-P-SO zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on September 15, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Delsjoy* subdivision, as revised and received September 15, 2005, is approved subject to the following conditions of approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the density requirements of the R-4-P-SO zone classification. All lots shall meet the minimum dimensional requirements of the R-4-P-SO zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).

5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file.”
 - d. The drainage facilities shall meet the requirements of the 1998 King County Surface Water Design Manual (KCSWDM). The facilities shall meet the requirements for Level 2 Flow Control and Basic Water Quality in the KCSWDM.
 - e. A drainage adjustment (L04V0091) is approved for this site. All conditions of approval for this adjustment shall be met prior to approval of the engineering plans.
 - f. The drainage design shall include provisions for future drainage conveyance from the undeveloped property to the east.
7. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. The 84th Ave NE internal road shall be improved at a minimum to the urban minor subaccess street standard.
 - b. FRONTAGE: The frontage along NE 190th St (south side only) shall be improved to the urban neighborhood collector standard.
 - c. OFFSITE: A 5 ft. paved pedestrian walkway is required along the west side of 85th Ave NE from NE 190th Street to the existing sidewalk entering the plat of *Westhill Village* (a distance of approximately 770 feet). This walkway shall be designed in rough

conformance with the Proposed Offsite Improvement Plan received September 15, 2005, unless otherwise approved by DDES. Note that widening of the existing 85th Ave NE driving lanes is required, to maintain a minimum 20 feet road width.

- d. A 5 ft. paved pedestrian pathway shall be provided in Tract D between proposed Lots 6 and 7.
 - e. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
- 8. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 - 9. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 - 10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 - 11. Planter islands, if any, within the cul-de-sacs shall be maintained by the abutting lot owners or homeowners association. This shall be stated on the face of the final plat.
 - 12. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., area calculations, dimensions, landscape specifications, equipment specifications, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plan. This plan must not conflict with the Significant Tree Inventory & Mitigation Plan.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat
 - 13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).

14. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if NE 190th Street or 84th Avenue NE is on a bus route. If NE 190th Street or 84th Avenue NE is a bus route, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
 - i. A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.
15. To implement KCC 21.A.38.230, Significant Tree Special District Overlay, which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention and engineering plans shall be consistent with the requirements of KCC. No clearing of the site is permitted until the tree retention plan is approved by DDES. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except as may be permitted under the provisions of KCC.

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with KCC 21A.38.230B6. The tree retention plan shall be included as part of the final engineering plans for the subject plat.

16. All buildings shall be set back a minimum of 50 feet from any common boundary with A-zoned property, and with all subsequent development notice shall be placed on title stating that the subject property is adjacent to designated agricultural land that is part of the King County Farmland Preservation Program and that a variety of commercial activities may occur there that are not compatible with residential development for certain periods of limited duration.

ORDERED this 26th day of January, 2006.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 26th day of January, 2006 to the following parties and interested persons of record:

Janet Baldwin
22232 - 17th Ave. SE, #207
Bothell WA 98021

Mark Barber
1215 - 114th Ave. SE
Bellevue WA 98004

Carol & Steve Benn
19023 - 86th Ave. NE
Bothell WA 98011

Helen Clark
8340 NE 187th Way
Bothell WA 98028

Mary Farley
18832 Bothell Way NE
Bothell WA 98011

Dan Gualtieri
19057 - 85th Ave. NE
Bothell WA 98011

Sandy Guinn
19010 - 88th Pl. NE
Bothell WA 98011

De-En Lang
Lang Associates, Inc.
10658 Riviera Pl. NE
Seattle WA 98125

Kathy Mier
19029 - 84th Ave. NE
Bothell WA 98011

Vita Mae Ogden
19002 - 86th Ave. NE
Bothell WA 98011

Tim Price
John F. Buchan Construction
2821 Northup Way, #100
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Steve Townsend
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MS OAK-DE-0100

Larry West
DDES/LUSD
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Bruce Whittaker
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before February 9, 2006***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before February 16, 2006***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JANUARY 10, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0020.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Trishah Bull and Bruce Whittaker, representing the Department; Mark Barber representing the Applicant; Sandy Guinn and Dan Gualtieri.

The following Exhibits were offered and entered into the record:

- | | |
|----------------|---|
| Exhibit No. 1 | Department of Development and Environmental Services File L04P0020 |
| Exhibit No. 2 | Department of Development and Environmental Services report dated January 10, 2006 |
| Exhibit No. 3 | Application dated November 12, 2004 |
| Exhibit No. 4 | Environmental checklist dated November 12, 2004 |
| Exhibit No. 5 | Determination of Non-Significance dated December 2, 2004 |
| Exhibit No. 6 | Affidavit of posting indicating January 21, 2005 as date of posting and January 24, 2005 as the date the affidavit was received by DDES |
| Exhibit No. 7 | Preliminary plat map dated September 15, 2005 (revised) |
| Exhibit No. 8 | Assessors maps: SW 6-26-05 & SE 1-26-04 |
| Exhibit No. 9 | Conceptual recreation plan received May 26, 2005 |
| Exhibit No. 10 | Preliminary drainage report by H & I received November 12, 2004 and Preliminary drainage control plan received May 26, 2005 |
| Exhibit No. 11 | L04V0091 – approved KCSWDM adjustment |

- Exhibit No. 12 Proposed off-site pedestrian path improvement plan received September 15, 2005 (revised)
- Exhibit No. 13 Traffic impact analysis by DN Traffic Consultants received November 12, 2004
- Exhibit No. 14 School walkway analysis included in body of letter received from Goldsmith on May 26, 2005
- Exhibit No. 15 Letter from Mark and Helen Clark received January 9, 2006
- Exhibit No. 16 2004 Westhill subarea plan updated received September 15, 2005
- Exhibit No. 17 Letter from the Northshore School District Director, Randy Wolf dated September 2, 2005
- Exhibit No. 18 Memo from Wendy Dorothy of John F. Buchan Construction, Inc. dated August 9, 2005

PTD:gao
L04P0020 RPT